

NOT FOR PUBLICATION - FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

CATHERINE FIGUEROA,	)	
	)	
Plaintiff,	)	Case No. 96-15
	)	
v.	)	
	)	
THE BUCCANEER HOTEL, INC.,	)	
COMPANION ASSURANCE CO., and	)	
MERIDIAN ENGINEERING, INC.,	)	
	)	
Defendants.		

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**ATTORNEYS:**

**Lee J. Rohn**  
St. Croix  
*For the plaintiff,*

**Douglas C. Beach**  
St. Croix  
*For the defendant.*

**MEMORANDUM**

Moore, C.J.

This matter is before the Court based on two motions of defendant for partial summary judgment. Such motions will be granted.

Plaintiff's complaint alleges: (Count I) religious discrimination under Title VII of the Civil Rights Act of 1964, (Count II) wrongful discharge in contravention of Virgin Islands law, (Count III) violation of the Virgin Islands Civil Rights Act, (Count IV) breach of contract, (Count V) intentional infliction of emotional distress, (Count VI) outrageous actions

entitling plaintiff to punitive damages.

## **TITLE VII CLAIM FAILS**

The only federal claim alleged is under Title VII of the Civil Rights Act of 1964. Title VII requires the filing of a complaint with the Equal Employment Opportunity Commission ["EEOC"], which was done with assistance of counsel on February 8, 1995, alleging religious discrimination. The EEOC noticed defendant of such claim July 11, 1995, and issued a "right to sue" letter to plaintiff which was received by plaintiff August 9, 1995.

This right to sue letter stated:

TO THE PERSON AGGRIEVED:

This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

(Exhibit C to motion. Emphasis in original.)

Despite such warning, plaintiff and her counsel only managed to file suit on January 24, 1996, more than 169 days after receipt of the letter, and 79 days beyond the statute of limitations.

The 90 day jurisdictional requirement is set out in 42 U.S.C. § 2000e-5(f)(1): "[T]he Commission . . . shall so notify the person aggrieved and within 90 days after the giving of such

notice a civil action may be brought against the respondent named in the charge . . . ."

Plaintiff argues that equity would dictate that such jurisdictional requirement should be waived (1) since defendants were on notice of the claim due to the EEOC's notification and (2) since defendants did not immediately file this motion. This Court disagrees.

Even if, as plaintiff argues, the defense is subject to waiver, the Court finds that the defense was not waived. Defendants raised the statute of limitations as their fourth affirmative defense in their answer to the complaint. Further, a stipulated scheduling order was entered by the Court on October 7, 1996, stating "All motions, except motions *in limine*, will be filed by July 15, 1997."

Thus, Count I will be dismissed.

#### **VIRGIN ISLANDS CIVIL RIGHTS ACT CLAIM FAILS**

Plaintiff also cites a violation of the Virgin Islands Civil Rights Act, but does not cite a particular section.

It must be clear by now that Title 24 does not provide a private right of action. *Shirley Rishi-Maharaj v. HOVIC*, Civ. No. 96-23(F) (D.V.I. July 30, 1997) (appended to motion by defendants). Plaintiff's assertion that the claim was based

on Title 10, Virgin Islands Code, and not Title 24, must also be rejected. *See Andersen v. Government*, Civ. No. 96-118(M) (D.V.I. November 21, 1997):

While [Andersen] may be able to obtain redress via [Title 10], the act still does not create a private cause of action under which the plaintiff can proceed. As delineated in the enforcement provisions . . . , only the Commission can sue to recover damages, not the individual claiming to be aggrieved.

*Id.* at 16.

## **CONCLUSION**

Judgment is summarily awarded against the plaintiff on Counts I and III. As the remaining counts state no federal cause of action, this case will be dismissed with prejudice for lack of subject matter jurisdiction. Defendant's have moved for costs and such will be awarded under 5 V.I.C. 541. This Court finds that at least the Title VII claim was frivolous and filed in bad faith, and this Court invites defendants to move for sanctions under 28 U.S.C. 1927.

**ENTERED this 19th day of February 1998.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**Chief Judge**

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Case No. 96-15

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ORDER

For the reasons given in the foregoing Memorandum, it is  
hereby

**ORDERED** that defendants' motions for summary judgment are  
**GRANTED**. This matter is **DISMISSED WITH PREJUDICE**. **COSTS** will be  
**AWARDED** in an amount to be determined.

**ENTERED this \_\_19th\_\_ day of February, 1998.**

For the Court

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
Chief Judge

ATTEST:  
ORINN ARNOLD  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

cc: Hon. G.W. Barnard  
Mrs. Jackson  
Adam Farlow  
Lee J. Rohn

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Douglas C. Beach

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